

**LFC Requester:****Eric Chenier**

**AGENCY BILL ANALYSIS  
2016 REGULAR SESSION**

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*{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}*

**SECTION I: GENERAL INFORMATION**

*{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}*

*Check all that apply:*

**Original**    ☒ **Amendment**    \_\_\_\_\_  
**Correction**    \_\_\_\_\_ **Substitute**    \_\_\_\_\_

**Date** 25 January 2016

**Bill No:** HB 198

**Sponsor:** Rep. Paul Pacheco

**Agency Code:** 305 – Office of the Atty. General

**Short**    Assisted Outpatient Treatment

**Person Writing**    Joseph M. Dworak, AAG

**Title:**    Act

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**SECTION II: FISCAL IMPACT**

**APPROPRIATION (dollars in thousands)**

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis ( ) Indicate Expenditure Decreases)

**REVENUE (dollars in thousands)**

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis ( ) Indicate Expenditure Decreases)

**ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)**

	<b>FY16</b>	<b>FY17</b>	<b>FY18</b>	<b>3 Year Total Cost</b>	<b>Recurring or Nonrecurring</b>	<b>Fund Affected</b>
<b>Total</b>						

(Parenthesis ( ) Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: **SB 113**

Duplicates/Relates to Appropriation in the General Appropriation Act

**SECTION III: NARRATIVE****BILL SUMMARY**

This analysis is neither a formal Attorney General's Opinion nor an Attorney General's Advisory Letter. This is a staff analysis in response to an agency's, committee's, or legislator's request.

**Synopsis:**

House Bill 198 creates the Assisted Outpatient Treatment Act by adding 15 new sections to the Mental Health and Developmental Disabilities Code. HB 198 also makes limited amendments to Sections 43-1-3 and 43-1-19 of the Code.

HB 198 establishes a process for assisted outpatient treatment proceedings in district courts that would allow a judge to order people diagnosed with mental illness and who meet certain criteria into outpatient treatment programs for up to one year.

A person may be ordered to participate in assisted outpatient treatment if the court determines they are 1) over 18 years old and a resident of a participating municipality; 2) have a primary diagnosis of a mental disorder; 3) have a history of lack of compliance with treatment for the mental disorder; 4) unwilling or unlikely to participate willingly in such treatment; 5) is in need of assisted outpatient treatment as the least restrictive alternative; and 6) will likely benefit from receiving outpatient treatment.

A petition for a court order authorizing assisted outpatient treatment must include an affidavit of a qualified professional who had personally examined, or unsuccessfully attempted to examine the respondent, within the past 10 days; and that the professional recommends assisted outpatient treatment. A petition may be filed only by:

- 1) a person at least 18 who resides with the respondent
- 2) a parent or spouse
- 3) sibling or child
- 4) director of a hospital where the respondent is hospitalized
- 5) director of a organization or home where respondent lives and receives mental health services
- 6) qualified health professional who treats or supervises mental health treatment of respondent for the past 48 months
- 7) a surrogate decision-maker.

**FISCAL IMPLICATIONS**

N/A

## **SIGNIFICANT ISSUES**

### **PERFORMANCE IMPLICATIONS**

HB 198 provides that a person 18 years old or older who resides with the respondent may file a petition for an order authorizing assisted outpatient treatment. Consideration should be given as to how a roommate would obtain an affidavit from a qualified professional as required in a petition to the court without implicating privacy laws and medical record confidentiality concerns.

HB 198 imposes several short time requirements in regard to scheduling hearings and issuing decisions. Several of these time requirements could be better clarified to avoid any confusion in implementing procedures. For example Section 6 requires a court to fix a date for a hearing “no sooner than three or later than seven days after the date of service.” What is the initiating date and the subsequent timeline because the term “service” may be problematic without further clarification. If “service” is the date of service of the notice of hearing, it is impossible to determine when the hearing must be scheduled because an actual service date cannot be guaranteed unless using electronic service methods. Instead, the hearing could be set a number of days from the date of filing the petition, and require the court to issue a notice of hearing within a certain number of days after the petition is filed.

HB 198 mandates that a respondent shall be represented by counsel at all stages of the proceeding without providing further details. It is not clear who would provide counsel if respondent is pro se. This role may be served by contract attorney services through the administrative office of the courts, but it should be made clear and financial obligations should be considered. Furthermore, securing an attorney, whether appointed or privately obtained, may take time. Consideration should be given to how obtaining counsel would affect the short time requirements for holding a hearing (currently 3-7 days after notice of the hearing).

HB 198 provides a “right to an expeditious appeal” of a final order. It is not clear how this would be applied to the judicial system or if more specific time requirements could be included.

HB 198 Section 11 limits assisted outpatient treatment for a period not to exceed one year, but it is not entirely clear whether applications for continued periods of treatment can extend treatment for an additional period of one year or if there is an absolute limit to one year of treatment, regardless of any extensions granted.

HB 198 allows for a qualified provider to appear telephonically (or by other remote means) in a hearing regarding the petition for an order to require treatment. Consideration should be given to confrontation clause issues in the event the respondent was ordered to a type of confinement.

### **ADMINISTRATIVE IMPLICATIONS N/A**

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 198 appears to be identical to SB 113.

### **TECHNICAL ISSUES N/A**

### **OTHER SUBSTANTIVE ISSUES N/A**

**ALTERNATIVES N/A**

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL N/A**

**AMENDMENTS N/A**